

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.

vs.

LAWSON SOFTWARE, INC.

:
: Civil Action No.
: 3:09CV620
:
:
: January 12, 2011
:

COMPLETE TRANSCRIPT OF THE JURY TRIAL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE, AND A JURY

APPEARANCES:

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P R O C E E D I N G S

THE CLERK: Civil action number 3:09CV00620, ePlus, Incorporated, versus Lawson Software, Incorporated. Mr. Scott L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. Michael G. Strapp represent the plaintiff.

Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent the defendant. Are counsel ready to proceed?

MR. ROBERTSON: Plaintiff is, Your Honor.

MR. McDONALD: Yes, Your Honor.

THE COURT: All right. You said you wanted to see me before the jury comes in.

MR. McDONALD: Yeah, there's basically three issues we wanted to raise.

THE COURT: The court reporters always can hear better if you come to the lectern.

MR. McDONALD: There's basically three issues that we wanted to raise this morning. One is our third witness in our case that we start today is Ms. Raleigh.

THE COURT: Third witness in what?

MR. McDONALD: In our case when we start presenting our case today. We have Mr. Richard Lawson first, Mr. Christopherson second, and then Hannah Raleigh was supposed to come back and be third today.

1 She was supposed to be back last night from New York,
2 and New York is getting hammered real bad by this blizzard.
3 She's trying to get another flight, but her flight is not going
4 to get her here until after the trial day is over today. So
5 we've been trying to work something out with ePlus about what
6 we would do next because we haven't disclosed any exhibits or
7 anything for the next witness.

8 THE COURT: Just call the next witness, the expert or
9 whoever you've got here. There's no magic to the order of
10 putting people on.

11 MR. McDONALD: The next witness we would have
12 actually here is Mr. Lohkamp, calling him back.

13 THE COURT: Good.

14 MR. McDONALD: That's fine. They haven't had a
15 chance to get ready for their cross-examination.

16 THE COURT: They'll be ready. They knew basically
17 what you were going to do anyway. They're not going to do it
18 on your cross-examination; they were going to do redirect, so
19 we're going to reverse things.

20 MR. McDONALD: We do have a deposition of Ms.
21 O'Loughlin on the RIMS prior art issue that we can move up in
22 the order.

23 THE COURT: Is that carefully edited to eliminate the
24 trash?

25 MR. McDONALD: That's being worked on as we speak,

1 and we'll try to go over --

2 THE COURT: We're going to have to do some serious
3 editing of depositions, because what I've seen is no more.

4 MR. McDONALD: We have two of them in our case.

5 THE COURT: Good.

6 MR. McDONALD: They are both pretty short. So I just
7 wanted to give that heads-up that we're going to try to get
8 everything we can --

9 THE COURT: From now on, get your witnesses here.
10 You have two choices basically: Either have them here and
11 staying here so they're here, or they have to be prescient
12 enough to look at the news just like the rest of us do, and
13 anybody who watched the television news on the weather could
14 have seen what was happening, going to happen in New York, and
15 you get a train out or get a car or get out.

16 We had a law clerk who was smart enough to do it in
17 Chicago and beat the storm simply because they were watching
18 what's going on. We're not running this on Lawson's business
19 schedule. We're running this for the jurors, and, if
20 necessary, Lawson -- if it's important to the order of things,
21 then they have to charter a plane and get them here or do
22 whatever it is that's to be done.

23 Remember, we're not going to do this just on a
24 schedule that is the convenience of the witnesses. That's just
25 not the way it's done in this district.

1 MR. McDONALD: Understood. I was disappointed --

2 THE COURT: I know you know, I know -- Lawson's
3 executives need to understand that this trial is running on the
4 schedule that is convenient for the jurors and is best for the
5 jurors, because they are the ones -- as important as all of you
6 are, they are the critically important people because they are
7 the ones who have to decide your futures.

8 That's why I want them kept -- I don't send them
9 breakfast, coffee, and donuts because I love them and because
10 there's a lot of money. I like them and respect what they are
11 doing, but we do these things here to keep the jurors'
12 attention and interest in the case and do the best we can. The
13 parties have to do their part.

14 MR. McDONALD: Understood, and I am sorry, Your
15 Honor.

16 THE COURT: Well, you didn't have anything to do with
17 it. You're not a travel agent, are you, or are you?

18 MR. McDONALD: No, I did not book those tickets, no.
19 The second issue, and I talked to Mr. Robertson about this this
20 morning, is for Monday, Martin Luther King Day, we were talking
21 about it, and for one thing, the main issue from our
22 perspective, honestly, is that our teams are running on fumes
23 right now. So to have the extra day would really help
24 people --

25 THE COURT: Who is running on fumes?

1 MR. McDONALD: Our teams, our teams of attorneys and
2 paralegals and things. So to have that extra day there to
3 catch up on some things, honestly, I think will help us
4 streamline the case from there.

5 But aside from that, we basically are both concerned
6 that we do have an African-American on the jury and not take --

7 THE COURT: Well, I told you, I'm going to poll the
8 jury. I'm going to ask them what they think. They'll be fine.

9 MR. McDONALD: We at least jointly wanted to request
10 --

11 THE COURT: So the record is clear, there are plenty
12 of Americans who respect Martin Luther King who are white as
13 there are who are African-American or black, so it isn't that I
14 don't respect Martin Luther king that I have a trial. In fact,
15 part of it is the thinking that I respect these jurors, and one
16 of them is black, in order to think about what they've got to
17 do. They make \$40 a day or 42 or something now to be here, and
18 that's hard on them. You all are making that a minute.

19 MR. McDONALD: We did have a joint request, and I
20 just wanted to make it clear, a joint request that we not have
21 trial on Monday. Obviously, we respect the Court's decision
22 either way on that.

23 THE COURT: Is somebody sick? I mean, is that what
24 you are saying or --

25 MR. McDONALD: At this point, I think the coughing,

1 as you indicated, has --

2 THE COURT: What?

3 MR. McDONALD: The coughing has subsided.

4 THE COURT: That doesn't mean that the illness is
5 gone. It means the symptoms are gone.

6 MR. McDONALD: I think there are certainly some that
7 have fewer symptoms but still have some symptoms at this point.

8 THE COURT: I'm sympathetic with you. The other
9 alternative I thought about was going on Saturday instead of
10 Monday, and the reason -- again, I'm not doing this -- this
11 isn't -- what is it?

12 MR. McDONALD: What is what?

13 THE COURT: This isn't Junction, Texas. That's not
14 why this is going -- do you know what I'm talking about?

15 MR. McDONALD: No.

16 THE COURT: The Junction boys were the people Bear
17 Bryant took from Texas A&M -- there were 60 of them -- out to
18 Junction, Texas to practice when he first went there. When he
19 came back, there were 28 of them, and he deliberately tried to
20 run off the weak sisters by -- and the noncompetitive people,
21 and he almost killed a team and a couple of kids in the
22 process, and I am -- this isn't being done to put you all
23 through an endurance test.

24 I'm trying to do this, again, to take care of the
25 jury. So I understand where you are, and I've actually been

1 there, and I know what it's like. I actually have spent a lot
2 of time doing what you did, and it hurts sometimes.

3 MR. McDONALD: Thank you. So those are those two
4 issues. The third issue I wanted to raise again -- brought
5 this up with ePlus this morning -- is when they call Mr.
6 Farber, Mr. Farber's testimony is going to relate to some of
7 these articles that were discussed at the pretrial conference
8 --

9 THE COURT: Some what?

10 MR. McDONALD: Articles about the settlements that
11 ePlus had with SAP and Ariba that they want to try to get into
12 evidence about their \$37 million settlements with Ariba, et
13 cetera.

14 THE COURT: Didn't I already rule on those?

15 MR. McDONALD: Well, you ruled on some of them they
16 needed to lay foundation on them before they would come in, and
17 we think we're at that point now where we can probably show you
18 why there's no foundation for some of those. We're wondering
19 if it was more efficient and appropriate to do that before the
20 jury came in. I think there's a way maybe we can deal with
21 this more efficiently by going through the exhibits that
22 they're going to use and talk about whether there is a
23 foundation for them.

24 THE COURT: I wish you told me you wanted to do this
25 yesterday, because I would have scheduled to be here at 8:30 or

1 eight o'clock, and then the jury wouldn't be sitting back there
2 waiting. Is Farber after a break? I don't know the amount of
3 time between now and when Farber comes on. How long is that
4 going to be; do you know, Mr. Robertson?

5 MR. ROBERTSON: Yes, Your Honor. I think -- well, I
6 think it would be through -- we're going to call Mr. Niemeyer
7 first, our source code expert. That's a little less than an
8 hour direct and then cross-examination, so it might be at a
9 break, Your Honor, and then we could discuss it during a break.

10 THE COURT: I think the thing to do is try to deal
11 with it at the break, and then we will -- well, if they're
12 here. Let's see if the jurors are here. Are they all here,
13 Mr. Neal?

14 THE CLERK: Let me go check.

15 THE COURT: Both of you would prefer not to go on
16 Monday. Is that what you are saying?

17 MR. ROBERTSON: I'm sorry, sir.

18 THE COURT: Both of you would prefer not to go on
19 Monday, and the reason is you're tired?

20 MR. ROBERTSON: Your Honor, we're tired, no question
21 about it.

22 THE COURT: I don't mean that. That was too
23 flippant. I don't mean that. It's because you are getting
24 drained, and everybody -- there have been sicknesses on both
25 sides, and you've tried to work through all that, and I'm not

1 trying to demean anybody's reasoning.

2 THE CLERK: We're waiting on one juror, Your Honor.

3 THE COURT: Okay, let's do what we can do without --
4 while we're waiting.

5 MR. ROBERTSON: If I can just address a couple issues
6 that Mr. McDonald raised and then a couple issues that we have.

7 THE COURT: Excuse me, just a minute. I've asked Mr.
8 Langford to have the jury talk to them about Monday and see
9 what they think. I don't know what is going on in their lives,
10 and we'll just see from there. Yes, Mr. Robertson.

11 MR. ROBERTSON: Your Honor, I'm sure we're all tired
12 and both sides could soldier through it --

13 THE COURT: I have every confidence that you could if
14 necessary.

15 MR. ROBERTSON: But my preference is to have the day
16 off as well, because we think we'd be able to help make the
17 case more efficient and streamline some of the issues.

18 THE COURT: Mr. McDonald thinks he's going to be
19 finished on Tuesday if we go on Monday. That's the last thing
20 I heard last night.

21 MR. McDONALD: No, we didn't say that. I think we
22 talked --

23 THE COURT: Has my hearing gone completely bad? I
24 thought you said that you would be through on Tuesday if we
25 went on Monday. Did I not hear that? Did you not say that?

1 MR. McDONALD: I don't believe I said that.

2 THE COURT: You didn't mean to say that. So whatever
3 I heard -- these cough drops don't have any hallucinogenic
4 properties. Tell me this before I ask you to get on with him:
5 How long -- assuming -- how many days do you have to get your
6 case -- to finish your part of the case based on what you now
7 know, and I'm not going -- you know, you get the same leeway
8 he's got if there's a problem, but I'm just trying to make some
9 plans.

10 MR. McDONALD: I think it's four to five days.

11 THE COURT: So today is what, Wednesday?

12 MR. McDONALD: Wednesday.

13 THE COURT: So that's Thursday, Friday, Monday,
14 Tuesday. That would be Tuesday, and five would be Wednesday.

15 MR. McDONALD: If we go on Monday.

16 THE COURT: I can subtract the one and figure out
17 what happens if we don't go on Monday.

18 MR. ROBERTSON: With respect to the first issue that
19 Mr. McDonald raised about the witness order, I understand that
20 Your Honor wants to fill the day. We just did not have advance
21 notice that Mr. Lohkamp was going to be called.

22 I will be able to cross-examine him, but I'd just ask
23 for a professional courtesy that someone can start getting
24 together the list of exhibits that we've been exchanging. Are
25 there any demonstratives with Mr. Lohkamp?

1 MS. STOLL-DeBELL: No, and I believe we should have
2 sent the list out to you already of Mr. Lohkamp's exhibits this
3 morning.

4 MR. ROBERTSON: We haven't seen it, so we'll send
5 somebody back and start pulling those together so we'll be
6 prepared to move forward with Mr. Lohkamp.

7 MR. SCHULTZ: I can get you a list.

8 MR. ROBERTSON: With respect to the issues on these
9 exhibits for Mr. Farber that Your Honor has indicated you want
10 to take up during the break, Mr. Strapp can address those
11 issues.

12 A couple of issues I want to raise, we had the
13 deposition videotape of one of the customers that Your Honor
14 ordered us to go back and review, Lynn Cimino, and it was an
15 hour and 25 minutes long, Your Honor, and we reduced it to four
16 minutes and 50 seconds.

17 THE COURT: To what?

18 MR. ROBERTSON: Four minutes and 50 seconds.

19 THE COURT: That beats Judge Williams' record. I'm
20 going to have to call him and tell him.

21 MR. ROBERTSON: Then we got the so-called fairness
22 designations from the defendant, and they added ten minutes and
23 50 seconds.

24 THE COURT: So you are at 15 to 20 minutes.

25 MR. ROBERTSON: We're going to withdraw it now, Your

1 Honor, because we don't even think they were fairness
2 cross-designations, had nothing do with our four minutes and 50
3 seconds, so we're going to take that out of the case.

4 So we're going to start with Mr. Niemeyer this
5 morning and Mr. Farber. We're going to rest subject to that
6 offer of proof. There's some stipulations in the final
7 pretrial order.

8 THE COURT: You're going to make a motion to put it
9 in the record; right, or do you want --

10 MR. ROBERTSON: I am. I don't know if I have
11 physically have it here.

12 THE COURT: As far as I'm concerned, you make a
13 verbal motion and preserve it. I know of no procedure that
14 says you can't make the motion to make the proffer and then I
15 consider their objections to it out later, and then -- because
16 it's not going to the jury anyway.

17 I have, in fact, had the situation where a proffer,
18 people have made a proffer and the other side wanted to deal
19 with it evidentially, and I've done that off the record in
20 sworn testimony -- I mean while the jury is deliberating or at
21 other times.

22 So if that's where we are, we'll have to deal with
23 it, but as far as I'm concerned, and I want your agreement, Mr.
24 McDonald, they've made the motion to put this in before they
25 rest, and you're going to file that this morning.

1 MR. MERRITT: Your Honor instructed us yesterday to
2 disclose the offer of proof to opposing counsel. We have not
3 had the opportunity to do that. We hope to deliver that to
4 them this morning. We want to keep faith with what you asked
5 us to do.

6 The motion papers are being finalized, and we had
7 anticipated giving a courtesy copy to Mr. McDonald and his team
8 this morning and then sometime by mid day actually filing a
9 written motion with the proposed offer of proof attached.

10 THE COURT: Okay. Just so it's done procedurally to
11 preserve your right to do it, because the Fourth Circuit --
12 actually, I guess -- I don't really know what the Federal
13 Circuit does, but the Fourth Circuit rule and the rule I have
14 to follow is that proffers, if made, need to be put in the
15 record properly, and you are entitled to make the proffer
16 because it's the way you test the validity of the Court's
17 ruling.

18 MR. ROBERTSON: I think where the Court was going
19 there when it inquired of Mr. McDonald, there's not going to be
20 argument here that if we haven't physically filed the offer of
21 proof before I rest my case that somehow it's untimely. Can we
22 have that understanding, Mr. McDonald?

23 MR. McDONALD: This is sight-unseen for us. I think
24 -- the procedure is going to speak for itself I think is what
25 you are saying. If they proffer it, that's not anything I have

1 control over. We might object because it wasn't in the
2 pretrial order, et cetera, but in terms of being timely, I
3 don't think that's the issue --

4 THE COURT: Being timely in the sense -- your
5 objection is that it's not timely in part, if I heard you
6 correctly, and that is that they did it once, and they can't do
7 it again.

8 That's a function of timeliness, but you're talking
9 about -- you are not objecting on the basis that it would --
10 let me just deal with it. Instead of getting into all this,
11 just file the paper and I'll take care it.

12 MR. ROBERTSON: Your Honor, we do have some
13 stipulations that were in the time pretrial order. There were
14 23. I think a lot of those stipulations have come out through
15 the evidence. There's probably a handful -- I've identified
16 what they are -- I think there are four or five that at the
17 appropriate time before we close, however Your Honor wants --

18 THE COURT: Read them into the record, and they mark
19 them as an exhibit, and that's it.

20 MR. ROBERTSON: Okay, Your Honor. There's one other
21 concern, two other concerns I have I'd just like to bring to
22 the Court's attention. This published by a vendor issue, I
23 think it's likely to come up with respect to Mr.
24 Christopherson's testimony and Mr. Lohkamp's testimony today.
25 We were given a demonstrative last night by the defendants, if

1 I could hand it up to the Court.

2 THE COURT: Wait a minute. Is the jury here, Mr.
3 Langford?

4 MR. ROBERTSON: I have a demonstrative. So this is a
5 demonstrative that the defendant has represented that they're
6 going to be using today with Mr. Christopherson, and I think it
7 goes directly to this issue about published by a vendor that
8 the Court has been grappling with.

9 And you can see there that when they're talking about
10 these item information changes, it's all about the customer
11 selects the desired items, the customer can add additional
12 information, the customer can delete item info, customer
13 modifies the item info.

14 We don't think this has anything do with the Court's
15 construction as to what a catalog is, and that is this whole
16 issue of misdirection and trying to take the Court's published
17 by a vendor construction and read into it all these other
18 elements that were never contemplated by the Court, that are
19 not part of the Court's order, and that, quite frankly, is
20 something that was manufactured by the defendant as a
21 non-infringement defense.

22 So they created this, and now they tell the Court
23 that they've relied on the construction in some way. They
24 didn't rely on the construction. They relied on their own
25 reconstruction of the Court's construction.

1 Your Honor came up with a suggestion yesterday for
2 published by a vendor as an instruction, not a construction of
3 a construction, and I just wanted to state for the record that
4 ePlus agrees to it. We think that would be fair. We think
5 that would remedy any of the problems.

6 We think we should stop having irrelevant issues
7 related to these kind of arguments, non-infringement arguments
8 that are of, as I say, the defendant's own manufacture, and for
9 them to turn around now and say, we relied on the fact that we
10 imbued all this additional construction into the Court's
11 construction, and then say, it's unfair that the Court's going
12 to give this new instruction, I think is just -- it's a
13 creation of their own strategy, and they can't now complain
14 that they built their defense on a house of cards that was on a
15 faulty foundation.

16 So, Your Honor, we think it's inappropriate to sit
17 here and suggest that that catalog information in any way can't
18 be somehow modified by the customer. It's not part of the
19 Court's construction.

20 THE COURT: Hold on. I want the text in front of me.
21 Do you want me to hear from Mr. McDonald at this time, or do
22 you have anything else on this topic?

23 MR. ROBERTSON: The only other thing, I understand
24 that Mr. McDonald is going to make an oral motion for judgment
25 as a matter of law today. I'll respond to it as best I can. I

1 have no idea what he's going to say. I'm informed they're not
2 filing an actual written motion today. I'm going to respond to
3 that, Your Honor, as best I can, but, obviously, I'm going to
4 be hearing it for the first time when the Court hears it. I
5 think I'll need -- I'm prepared to address most of the issues,
6 but I don't have all the evidence.

7 THE COURT: Why don't we face the question of whether
8 you can or can't do it adequately later?

9 MR. ROBERTSON: I would like and I would hope we
10 could work out a reasonable briefing schedule with respect to
11 it so all the issues can be addressed in an orderly fashion.

12 THE COURT: We'll deal with it.

13 MR. ROBERTSON: Thank you, Your Honor.

14 THE COURT: Did anybody check the transcript about
15 whether -- what is in -- about your agreeing to this, the
16 language that's reflected in the --

17 MR. ROBERTSON: Yes, Your Honor, I have the
18 transcript here at the appropriate place.

19 THE COURT: What does it say?

20 MR. McDONALD: There was an agreement.

21 THE COURT: Excuse me one minute for the record, so
22 we'll get it straight. The claim construction opinions says
23 the parties' disagreement over whether a catalog must be
24 published by a vendor was resolved when they agreed at oral
25 argument that the term vendor includes suppliers, distributors,

1 and manufacturers.

2 MR. McDONALD: That's exactly what happened under the
3 transcript, Your Honor.

4 THE COURT: Do you have the transcript to show me?

5 MR. McDONALD: Mr. Schultz will pull that out, and
6 there's several pages of discussion on it, but it's pretty
7 clear that that is what happened, that the objection that Mr.
8 Robertson had was that the term vendor could be construed
9 unduly narrowly.

10 I came back and said, that's not my intent. It's to
11 cover the seller so it would include suppliers and distributors
12 and those people described in column four of the patent as the
13 people that publish catalogs. They said -- you asked them if
14 that was acceptable if we made it clear that vendors would
15 include that group of three different types of companies, and
16 they said yes.

17 THE COURT: Yes, and then what he is saying now is
18 that you are doing precisely what you said you were not going
19 to do, and I'll have to read the transcript. Somebody will, I
20 think, have a copy of it for me and mark the pages so I can
21 read it during a recess --

22 MR. McDONALD: Yes, Your Honor.

23 THE COURT: -- and deal with that, but I've thought
24 about it this and reviewed everything but the transcript last
25 night, and my inclination is there will be an instruction given

1 to the jury of the kind that I have given to you except that it
2 would say at some previous time for it to make sense with the
3 text -- with the issues in the case. In other words, to give
4 it the right context instead of saying at some time.

5 MR. McDONALD: Your Honor --

6 THE COURT: That's my inclination. I want you -- I'm
7 not ruling. I'm trying to put you in picture of my thinking so
8 that your argument can address that, but if I don't need to do
9 it now, I'd rather just do it during a break later, because
10 it's going --

11 MR. McDONALD: It could relate -- it will relate to
12 testimony that's going to be coming up probably sooner rather
13 than later.

14 THE COURT: Who's the testimony coming in?

15 MR. McDONALD: Mr. Christopherson.

16 THE COURT: But he's not -- we're going to have a
17 break before --

18 MR. McDONALD: Oh, yeah, we'll have a break. You're
19 saying you want to have a break before we discuss this further?

20 THE COURT: Yes. I'm not going to cut you off. The
21 jury is here now.

22 MR. McDONALD: I want to make a couple of quick
23 points. The issue where -- you know, was there going to be
24 some trick had to do with a narrow reading of the term vendor,
25 and I said we're not trying to play a trick there, we're

1 willing to use that in its broad sense that would include
2 suppliers, distributors, and manufacturers. That was the
3 gotcha issue there, and that was totally resolved where we
4 conceded that.

5 My discussion at the Markman was very clear that the
6 word "publish" wasn't some sort of a gotcha word. This was
7 important, because without that in the definition, if it's just
8 an organized collection of item information, including things
9 like a catalog number, that could include many things that the
10 patent itself described in terms other than a catalog like an
11 order list or a requisition or a purchase order. All of those
12 things could be called organized collections of items that
13 could include things like catalog.

14 THE COURT: So you understand, Mr. Robertson
15 understands about what my preliminary thinking is, is that I
16 suppose that with my edit, this instruction would be given to
17 the jury, and it would be at some previous, a vendor such as
18 such-and-such has made generally known or has disclosed, et
19 cetera.

20 Then the question becomes this as I see, and I'm
21 telling you this not to rule at this point but to tell you how
22 I'd like to at least have you all address the issues, because
23 it's how I framed it in my thinking and that is this: The
24 question then becomes with this instruction, is testimony of
25 the ilk shown in this slide such as you are offering, is it

1 even relevant to the question.

2 In other words, are you free to still argue as a
3 matter of fact that published by a vendor, circumscribed by the
4 definition which is the general definition of the term, or of
5 the word published, is that a fact issue that you can put on
6 testimony about, or is it not a fact issue, and if it's not an
7 issue, then you can't put on testimony about it because it's
8 not relevant. That's what I think the issue is here, I
9 believe. Do you agree with that, Mr. McDonald?

10 MR. McDONALD: I think it's a two-step process. If
11 we get to the point where you decided over my objection,
12 because I do object to this proposed definition, if that's in,
13 that's the next question.

14 THE COURT: Yes, yes. I understand you have the
15 objection. You said you objected to it yesterday, but I also
16 said you wanted to think about it. You said this morning you
17 object to it, and I understand that. My question related to
18 assuming -- I thought I made clear. If I didn't, I'm sorry.

19 If I give this, if this is the instruction to the
20 jury -- let's assume that -- and then the real issue, is it a
21 factual issue to be decided, and you agree -- you say it is a
22 factual issue to be decided because it's -- you have the
23 freedom to say, well, that isn't what we do, and they say it's
24 not a factual issue, or their other side is, well -- the other
25 argument is, I guess, well, it doesn't make any difference,

1 they're just playing smoke and mirrors, because, in fact, they
2 take the -- the information comes from a catalog, and it gets
3 imported into the system.

4 MR. McDONALD: The fact question is the item master
5 database is what is accused of being multiple catalogs under
6 the Court's definition. I should be able to show as a factual
7 matter that the item master is not multiple catalogs published
8 by one or more vendors as a fact issue.

9 THE COURT: Let the jury decide --

10 MR. McDONALD: Even under this definition of the
11 Court, we should be allowed to argue that.

12 THE COURT: And let the jury decide.

13 MR. McDONALD: Exactly.

14 THE COURT: Okay.

15 MR. McDONALD: Could I mention one other thing, Your
16 Honor? This came up in the context of testimony about things
17 like who decides what goes into the item master, and we were
18 precluded from asking questions on that pending the Court's
19 decision.

20 Then the video came in of, I think, Ms. Oliver,
21 Kristy Oliver, where ePlus's counsel at page 29 asked the
22 question, now, who makes the decisions about what nonstock
23 items to include in the item master.

24 THE COURT: Excuse me. What page is that?

25 MR. McDONALD: Page 29, line 12.

1 MR. ROBERTSON: I'm sorry, whose deposition?

2 MR. McDONALD: Kristy Oliver.

3 THE COURT: They didn't offer page 29, line 12. My
4 copy that is on page ten of the summary -- I mean of the
5 transcript of the video, and it starts -- I'm sorry. I'm
6 looking at the wrong entry. 29 I was looking at was the --

7 MR. McDONALD: It's entry number 18.

8 THE COURT: -- was the entry number. Okay, let me
9 look. Entry what? 18?

10 MR. McDONALD: Yes, page 29, line 12. So the
11 question there was, now, who makes the decisions about what
12 nonstock items to include in the item master.

13 The answer is, I do, in addition to our contract and
14 licensing purchasing manager based on the frequency of
15 ordering. If we see an item is being ordered frequently, we
16 try to get that item added into our item master list.

17 So that door has been opened clearly.

18 THE COURT: Did you do what I asked to you do and go
19 back and look and see what Dr. Weaver said about this? I had
20 some recollection Dr. Weaver was also asked about it, too.

21 MR. ROBERTSON: I asked Dr. Weaver, Your Honor --

22 THE COURT: Just a minute. He's got the floor. He
23 didn't go back and do that.

24 MR. McDONALD: I don't think I have that information
25 at my fingertips.

1 THE COURT: Okay, thank you. Do we need resolve this
2 now, or can we go on and call the jury?

3 MR. ROBERTSON: I think we can resolve it.

4 THE COURT: Wait a minute.

5 MR. McDONALD: As long as it's resolved before Mr.
6 Christopherson. I think that's the next time it's really going
7 to come to a head.

8 THE COURT: Thank you. Yes, Mr. Robertson.

9 MR. ROBERTSON: On this last issue --

10 THE COURT: The question isn't, can we resolve it.
11 The question is, do we need to resolve it now, or can we wait.

12 MR. ROBERTSON: I think we need to resolve it before
13 Mr. Christopherson. I would like to point out that it was
14 Lawson who counter-designated that Kristy Oliver excerpt that
15 Mr. McDonald just read.

16 THE COURT: This was an Oliver designation.

17 MR. ROBERTSON: Yes.

18 THE COURT: I mean a Lawson designation.

19 MR. ROBERTSON: Yes, sir.

20 THE COURT: So I'm straight, item number 18 is
21 Lawson.

22 MR. ROBERTSON: That's my understanding.

23 THE COURT: All right, just a minute. The people who
24 did these designations, I want you to go back -- who is that,
25 Mr. Schultz and Mr. --

1 MR. ROBERTSON: Mr. Strapp.

2 THE COURT: Mr. Strapp, I want you to go back, and I
3 want you to confirm that's what it is so I don't have any fight
4 over that issue. Either it was cross-designated by Lawson or
5 it was not. If you did it, then I want to know, okay?

6 MR. ROBERTSON: That's my understanding.

7 THE COURT: I understand that, but in the heat of
8 battle, we have a lot of understandings, and where we have a
9 chance, sometimes we like to disengage from the fray and
10 double-check things, so that's what we're going to do.

11 MR. ROBERTSON: Just briefly on this issue about
12 published by a vendor, Your Honor, I have gone back and looked
13 at the Markman hearing, and I did alert the Court at the time
14 that mischief was ripe with this argument about published by a
15 vendor.

16 At the same time, we were having a dispute as to what
17 was a vendor, and the Court resolved it by saying, a vendor is
18 going to a manufacturer, a supplier, or distributor; you agree
19 to that, Mr. Robertson. And I said, yes. But the dispute
20 centered around whether or not there was published by a vendor,
21 and the Court actually said, if this was going to be some sort
22 of gotcha, then I can later find that what is a sneaky way to
23 get a summary judgment -- I may re-construe the claim in the
24 summary judgment process.

25 Well, it didn't go through the summary judgment

1 process, but it's resurfaced, and I raised it again at the
2 final pretrial conference when they wanted to introduce a
3 definition of published, and then I raised it again on the
4 first day of the trial, you may recall.

5 THE COURT: What does the transcript say about that?

6 MR. ROBERTSON: The transcript on the --

7 THE COURT: Of the final pretrial conference.

8 MR. ROBERTSON: It was -- the Court -- let me just --

9 THE COURT: See what I'm saying is that this can all
10 be done later. Go check it out, and give me that information.

11 MR. ROBERTSON: I will pull this all together.

12 THE COURT: I would like to have you copy the pages
13 of the transcript, designate them, copy them, and show me what
14 they are. Give them a copy, and then I'll have a full base in
15 front of me. We're all moving at a significant pace here, and
16 I'd like to do it right.

17 MR. ROBERTSON: I understand, Your Honor. I would
18 just say, as the Court has represented, it might modify that
19 published by a vendor to say previously.

20 THE COURT: At some previous time.

21 MR. ROBERTSON: At some previous point in time, ePlus
22 would not have any objection to that, and our position would
23 be, Your Honor, that is then a pure matter of law. It's not
24 something that can be argued. There's nothing in the Court's
25 definition of what published by a vendor would mean that could

1 suggest that if a customer in some way reformats the data,
2 takes something like Mr. Matias testified yesterday that is
3 described as a suture and abbreviates it as s-u-t, somehow then
4 takes it out of the Court's description of what a catalog is or
5 what is published by a vendor. Those kind of fact issues
6 really have no relevance to this case under the Court's
7 constructions.

8 THE COURT: You're going to make me copies of those
9 transcripts so I can have them. Make sure you get everything
10 in one copy. Somebody from your side and somebody from
11 Lawson's side agree on what the total part of the transcript is
12 that I need to consider in assessing this issue so I have it
13 all in one place, and then you can separately give me a
14 transcript from the claim construction hearing and a separate
15 one from the final pretrial conference; okay?

16 MS. STOLL-DeBELL: We're going to do joint for both
17 of those areas.

18 THE COURT: Separate in the sense that there'll be
19 one for each hearing but jointly agreed upon as to number of
20 pages and lines and so forth that I need to look at. Then
21 you'll have both have the same playing field. Okay, let's get
22 the jury.

23
24 (Jury in.)
25

1 THE COURT: Good morning, ladies and gentlemen. We
2 didn't get the snow. It all went to New York, and they were
3 praying it comes back here. Before we start this morning, I
4 have had asked Mr. Langford to have you all talk about
5 something back there. We're trying to plan for the future, and
6 we're always mindful, the lawyers and I are mindful of the
7 imposition service on a jury is to you and your employers and
8 your families and your whole life, and so one of the things
9 that I was thinking about was whether we ought to have a
10 session on what otherwise would be a holiday which is next
11 Monday. I think it's the 17th, Martin Luther King Day, and did
12 you all talk about whether you want -- you would like to have
13 the day off?

14 You may have already made plans for all I know to go
15 do something else. Sometimes jurors also just like to be away
16 from it for an extra day, and I think the day off this Monday
17 probably helped your psyche. On the other hand, it does extend
18 the time you are serving, so if you all have talked about it
19 and have reached a resolution, let me know what you're view is.

20 I'm not saying that's exactly what we'll do, but
21 we'll certainly take it into account. If you haven't had
22 sufficient time to talk about it, we don't have to do it now.
23 You can talk about it and let me know at the end of the day.
24 Okay, you haven't had a chance, okay.

25 A JUROR: We talked somewhat about it, but we haven't

1 made a decision.

2 THE COURT: That's fine. As I said, I'm not saying
3 that we're going to do exactly what you want. Another option
4 that I had thought about was having the trial go on Saturday
5 and then doing Monday off as well. Some jurors don't feel like
6 they want to do that, and I recognize -- I haven't been on a
7 jury, but I have had to serve as the finder of the fact in long
8 trials, and I do know that sometimes a couple of days away from
9 the fray really helps you in the process, and it's worth the
10 investment of an extra day or two that way. So you all take
11 that into account and let us know. Okay. All right, Mr.
12 Robertson.

13 MR. ROBERTSON: Your Honor, our next witness will be
14 Mr. Niemeyer, an expert.

15 THE COURT: All right.

16 MR. ROBERTSON: Ms. Albert will be handling the
17 direct examination.

18
19 **PATRICK D. NIEMEYER,**
20 a witness, called by the plaintiff, having been first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ALBERT:

24 Q Good morning, Mr. Niemeyer.

25 A Good morning.

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1 Q Would you please state your full name for the record.

2 A Patrick Dennis Niemeyer.

3 Q Would you briefly describe your educational background
4 since high school?

5 THE COURT: If you don't mind, before you do that,
6 would you spell your last name. There are a number ways to
7 spell that name.

8 THE WITNESS: Certainly. N-i-e-m-e-y-e-r, and I
9 studied physics at St. Louis University in the time period 1991
10 to 1993 at which point I left to pursue a job opportunity with
11 Southwestern Bell Technology Resources which is research
12 division of Southwestern Bell.

13 This was at the, sort of the beginning of the
14 internet boom, and various opportunities opened from there, and
15 I never returned to my study of physics.

16 Q Have you written any books relating to computer
17 programming or writing source code?

18 A Yes. I'm the author of a series of books on the Java
19 programming language entitled *Learning Java* and *Exploring Java*.

20 Q And this is one of your books?

21 A Yes, published by O'Reilly and Associates which is a
22 well-known technical book publisher.

23 Q Do you know how widely distributed your books are?

24 A Yes. Currently *Learning Java* is published in nine
25 languages worldwide, and it's been consistently among the best

1 selling books for over ten years.

2 THE COURT: What is Java?

3 THE WITNESS: Java is a computer programming
4 language. I could describe it more.

5 THE COURT: No, I just think it's helpful -- I had to
6 learn what it was. I didn't know how many people on the jury
7 knew what it was. I had to learn what it was early on on this
8 job, but I didn't know before that. All right, go ahead.

9 Q So what is the Java programming language if you can
10 describe it at a high level?

11 A So Java is a particular programming language in which the
12 instructions for a computer program are written by a person.
13 They are human readable form of the computer program that
14 someone writes in order to implement a program. A program is
15 something like Microsoft Word or your web browser, something
16 that runs on the computer.

17 Java is a particular language in which those are written.
18 It has certain capabilities and features that differentiate it
19 from other computer programming languages.

20 Q Why do programmers use different languages? Why can't all
21 programmers use the same programming language?

22 A Well, similar to the way humans speak different languages,
23 there are different ways to express the instructions for
24 computer programs. Different languages have different
25 capabilities, different features, were developed at different

1 times. Java is a modern, fairly modern recent programming
2 language which has a number of capabilities that are different
3 from older generations of programming languages.

4 Q Now, do you know if your books are used as textbooks for
5 university programming classes?

6 A Yes. My understanding is they are used in coursework at a
7 number of universities including Washington University in St.
8 Louis.

9 Q What, if any, awards have either of your books won?

10 A My book *Learning Java* won the 2001 Readers' Choice Award
11 for best introductory Java book.

12 Q Are you a member of any expert groups for the Java
13 programming language?

14 A Yes. I've served on three expert groups as part of what's
15 known as the Java Community Process which governs the evolution
16 of the Java programming language.

17 Q Can you explain to us what the nature of these expert
18 groups are?

19 A Yes. So, as proposals are made for incorporating new
20 features into the Java programming language, the organization
21 convenes sort of in expert groups which consist of people with
22 a great deal of experience in the field or pertaining to the
23 particular area of the proposal.

24 The expert groups convene to study the problem, make
25 concrete recommendations for changes, and normally those are

1 adopted by a process and incorporated into the language that's
2 used by everyone.

3 Q Have you ever developed a programming language of your
4 own?

5 A Yes, I'm the author of a fairly popular Java-based
6 scripting language called BeanShell which is used all over the
7 world in products ranging from service applications to
8 developer tools.

9 Q What is your current occupation?

10 A I am the principal of my own consulting company as well as
11 the CTO of a company called an Ikayzo, I-k-a-y-z-o.

12 Q And by CTO, do you mean chief technical officer?

13 A Yes.

14 Q And what does Ikayzo do?

15 A Ikayzo is a software development company that specializes
16 in a wide range of applications ranging from financial industry
17 to desktop and even iPhone and iPad applications.

18 Q In your current consulting business, would you briefly
19 describe some of the projects you are working on?

20 A Yes. So I spent a great deal of time over the years
21 working on large enterprise systems in areas such as finance
22 and similar systems. More recently, I've worked on a variety
23 of networked applications including -- currently doing work for
24 a company called Referentia that contracts for DARPA -- that's
25 part of the Defense Department -- and it's an advanced network

1 monitoring tool.

2 I've also recently completed work on a high-performance ad
3 server for a company called Value Commerce.

4 THE COURT: Ad as in advertising?

5 THE WITNESS: Advertising server which serves webbed
6 banner advertising for the large -- Value Commerce is based in
7 Japan, and they are largest web advertiser in Asia.

8 Q About how many years have you been reading and writing
9 source code?

10 A I'd say professionally about 20 years, but more generally
11 since I've had my first computer when I was a kid.

12 Q Do you consider yourself fluent in any programming
13 languages?

14 A Yes. Aside from Java, I'd say I have a great deal of
15 experience with languages such as C and C++, web-related
16 technology such as JavaScript, XML, and XSLT.

17 Additionally, I have a great deal of experience with some
18 less commonly used languages today such as COBOL and related
19 languages.

20 Q Now, you said -- you mentioned XML. What does that mean?

21 A XML stands for extensible markup language, and it is a
22 textual data format that is commonly used for the exchange of
23 data especially relating to web-based services. It's a very
24 popular data format.

25 Q Now, you talked about Java earlier, but you also mentioned

1 JavaScript. What is the difference between the two?

2 A JavaScript is a language that was designed to run within a
3 web browser. So a web browser is like Internet Explorer or
4 Firefox that you use to browse the web, and JavaScript is a
5 programming language that can be downloaded alongside content
6 like web pages and images and such into your web browser and
7 runs within the web browser to perform dynamic activity for web
8 pages, sometimes communicating with the server and performing
9 activities like that.

10 Q You mentioned COBOL. What is that?

11 A COBOL stands for common business oriented language. COBOL
12 is one of the earliest widely used programming languages in
13 business, and it is an older generation programming language
14 that is still found in some places today in large
15 organizations.

16 Q And have you worked with the COBOL programming language
17 before you worked on this case?

18 A Yes, I have.

19 Q And what was the context?

20 A Well, for example, at a company called Edward Jones, which
21 is a large financial institution, I worked there during a
22 period where they were migrating a large amount of COBOL --
23 large number of COBOL applications to the C and C++ languages.

24 During that time, I worked on both the development of
25 tools for the migration of data and code between the two

1 languages and as well as mentoring groups of programmers and
2 teaching them about the differences between the two languages.

3 Q Are you being compensated for the time you've spent
4 working on this case?

5 A Yes, I am.

6 Q Is that compensation dependent at all on your testimony
7 here today?

8 A No, it's not.

9 Q Is your compensation dependent on the outcome of the case?

10 A No, it's not.

11 MS. ALBERT: At this time, Your Honor, ePlus would
12 like to offer Mr. Niemeyer as an expert in the field of source
13 code with particular emphasis on the interpretation and
14 understanding of source code and computer programs written in
15 the JavaScript, Java, COBOL, XML, and XSLT programming
16 languages.

17 THE COURT: Any objection?

18 MS. STOLL-DeBELL: No, Your Honor.

19 THE COURT: All right, he's accepted as an expert in
20 those areas, ladies and gentlemen. All right.

21 Q Mr. Niemeyer, let's go back, and could you briefly tell
22 the jury what source code is?

23 A As I started to describe it before, source code is the set
24 of human readable instructions that comprise a computer
25 program. So when someone wants to write a program like

1 Microsoft Word or something on the desktop, they write that as
2 a set of instructions in particular programming language.

3 Q And what's done with that human readable programming
4 language in order to make it useful for the computer?

5 A Well, in most cases there's an intermediate step called
6 compilation where a tool called compiler take the human
7 readable instructions and transforms them into a machine
8 readable form that is the actual program you use on the
9 computer.

10 THE COURT: So when you are doing a program for
11 somebody, do you start out using some base and then write it
12 out, and then it gets transferred by compiler into something
13 that the computer can read?

14 THE WITNESS: You write in an editor that's much like
15 a word processor but has some additional capabilities, and then
16 you periodically test what you are writing, normally by
17 compiling it, which is a stage that you -- or step that you
18 perform, and then you run the code to test it, and you do that
19 iteratively during the process.

20 Q Now, we mentioned this COBOL programming language earlier.
21 Is the COBOL programming language relevant to the accused
22 Lawson systems?

23 A Yes.

24 Q And could you describe how a COBOL program is structured
25 at a high level, please?

1 A COBOL programs are centered around files, and two types of
2 files used in COBOL programs are known as program definition
3 files which contain the instructions written in the COBOL
4 programming language, and what are known as working storage
5 files which describe the data used by the corresponding program
6 definition files.

7 Furthermore, these COBOL files run within the context of
8 what is known as a transaction manager which is a -- I describe
9 as a runtime environment or a platform that determines which
10 instructions are executing at what time and move data into and
11 out of the associated working storage.

12 Q Mr. Niemeyer, are you familiar with something called
13 Lawson 4GL?

14 A Yes. By virtue of my work on this case, I have come to
15 know Lawson 4GL as a proprietary extension of the COBOL
16 programming language created by Lawson for use in their
17 products.

18 Q Is that 4GL an entirely new programming language?

19 A No, it is not. As I described, it is an extension of the
20 well-known COBOL programming language.

21 Q Now, Mr. Niemeyer, were you retained by ePlus to study the
22 source code that Lawson produced in discovery for the system
23 accused of infringement here?

24 A Yes, I was.

25 Q Would you describe the nature of the opinions you've

1 rendered in this case at a high level?

2 A I was asked to investigate the structure, function, and
3 operation of specific features within the Lawson system.

4 Q Did you render any opinions on whether the Lawson system
5 you studied infringes the patents?

6 A No, I was not asked to. I did not.

7 Q Do you understand whether or not ePlus has another expert
8 that performed that function?

9 A Yes, my understanding is that Dr. Weaver is responsible
10 for rendering those opinions.

11 Q Could you describe for the jury the circumstances under
12 which you reviewed the Lawson source code?

13 A Yes. The source code was made available at a secure
14 location in Washington, D.C. I traveled to that location on at
15 least seven occasions and spent a total of at least 19 days
16 reviewing the source code. I was also able to print excerpts
17 of the source code for later review.

18 Q Did you review the entire amount of the source code that
19 was produced by Lawson?

20 A No. I reviewed the portions of it that I determined were
21 applicable to the functionality I was asked to investigate.

22 Q What specific functions of Lawson system were you asked to
23 investigate?

24 A I was asked to look at features of the S3 product
25 including category and keyword search, shopping cart

1 functionality, requisition creation, purchase order generation,
2 and what's known as punchout.

3 Q How did you figure out --

4 THE COURT: Go through those again, would you?
5 Category, search?

6 THE WITNESS: Category and keyword search, category
7 search and keyword search, shopping cart functionality,
8 requisition generation, purchase order generation, and what
9 Lawson calls their punchout feature.

10 THE COURT: Thank you.

11 Q And how did you figure out what source code was relevant
12 to those functions?

13 A I began by reviewing the available demonstration material
14 which illustrated the functionality, and from there I was able
15 to identify the user interface features that supported that and
16 the code which implements or supports those user interface
17 features.

18 From there I was able to trace the flow of the program
19 from the user interface elements through the, what I call the
20 back end, the Lawson 4GL COBOL programs, and ultimately to the
21 database structures involved. This is the kind of thing you do
22 routinely in working with software, so I was able to trace the
23 flow through the code.

24 Q Besides the source code itself, were there any other
25 documents that you found particularly helpful to your study and

1 understanding of Lawson source code?

2 A Yes. There were Lawson technical documents that I
3 reviewed. One in particular that comes to mind is the Lawson
4 4GL application programmer interface reference document.

5 MS. ALBERT: Could you please put on the screen
6 Plaintiff's Exhibit 470.

7 Q Mr. Niemeyer, you could either look in your binder or its
8 on your monitor there. Could you take a look at Plaintiff's
9 Exhibit 470, and is this the document that you referenced?

10 A Yes, it is the one I was referring to.

11 Q How did you use this document during your study of
12 Lawson's source code?

13 A So this is a reference document of the type that a
14 programmer would use when developing this Lawson systems. It
15 is sort of a dictionary or encyclopedia-like document that
16 defines specific features provided by the Lawson system to the
17 programs.

18 So as I would come across usages of these features within
19 the source code, I would reference this document to learn their
20 precise meaning and usage.

21 Q Is this reference manual the type of document that a
22 source code expert like you would reasonably rely on in reading
23 and understanding the functionality of source code?

24 A Yes, it is.

25 Q Mr. Niemeyer, approximately how many hours would you say

1 that you spent studying Lawson's source code in this case?

2 A I would estimate between 250 and 300 hours.

3 Q Now, turning to your analysis of the systems, have you
4 prepared a demonstrative to help you explain how the Lawson
5 system is built from a source code perspective?

6 A Yes, I have.

7 MS. ALBERT: Mike, could we have slide 84 from slide
8 deck 93, please.

9 Q Is this a demonstrative that you prepared, Mr. Niemeyer?

10 A Yes, it is.

11 Q Now, on your demonstrative, if we could orient ourselves,
12 we're showing two sides of the system, if you will. On the
13 left-hand side, you've labeled that the client side, and the
14 right-hand side is labeled server side. Can you explain at a
15 high level what a client and a server is?

16 A Yes. Software applications are often structured in a way
17 termed client -- in a client and server configuration where the
18 client component communicates with the server component over a
19 network. An example of this that many people would be familiar
20 with would be web browser and a web server.

21 When you are using your web browser like Internet
22 Explorer, you are talking to web server. Your web browser is a
23 client, and the web server is the server component that is
24 sending data to it.

25 Q Is server just another name for a large computer?

1 A In general, sure. It's a remote computer.

2 Q Using this demonstrative, would you explain the source
3 code architecture of Lawson's system and the components you've
4 illustrated in your demonstrative?

5 A Yes. The portion on the left labeled client is, contains
6 components that run in the user's web browser. Some items
7 labeled there are JavaScript which I mentioned earlier is a
8 programming language that executes within the browser. HTML
9 are the actual pages that display the information.

10 The right portion on the right labeled service side are
11 the components that run on the server. There is a Java -- box
12 labeled Java web application. That's essentially a web server
13 that feeds the data to the web browser.

14 Below that, the area labeled Lawson transaction manager
15 and Lawson 4GL COBOL comprise what I would call the business
16 logic of the application and contains the Lawson 4GL COBOL
17 code. The transaction manager and supporting features are also
18 -- my understanding is they are termed by Lawson as Lawson
19 system foundation. So it's sort of the back end portion of
20 that.

21 There's the database indicated there which contains the
22 data for the application, and the final box up on the right
23 labeled MCI is just an alternate mechanism for the Java
24 components to talk to the database.

25 Q Now, you discussed in your demonstrative that there are

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1 both Lawson web-based applications and Lawson 4GL applications
2 within the Lawson system. Could you describe at a high level
3 the kinds of functionality that are implemented in the system
4 using the 4GL application?

5 A Yes, the Lawson 4GL COBOL code implements the feature of
6 the S3 system including requisition, inventory control, and
7 purchase order.

8 Q Could you describe at a high level the functionality
9 implemented in the system using the web-based applications?

10 A The web-based components including the Java web, or Java
11 application server and the components that run the browser
12 together comprise a web-based interface to that Lawson 4GL
13 functionality. They are sort of an overlay or an add-on that
14 provides that browser-based access to those components.

15 Q What are some examples of the Lawson web-based
16 applications that you studied?

17 A I believe Lawson calls the system the requisition
18 self-service component, and I believe they also called it --
19 refer to their punchout component as a web-based component.

20 Q Now, you also mentioned this Lawson system foundation.
21 Could you briefly explain why the Lawson system foundation is
22 important to the functioning of the Lawson system?

23 A Yes. So the Lawson system foundation, inasmuch as it
24 contains the transaction manager, is responsible for running
25 the Lawson 4GL COBOL programs. It is a runtime environment or

1 a container of sorts that holds that code, determines what's
2 running at what time, and moves the data into and out of it.
3 It's required to run those applications.

4 Q Could you describe at a high level what the functionality
5 is with respect to the Lawson transaction manager?

6 A Yes. The Lawson transaction manager would be the key
7 component there that actually runs the COBOL programs for the
8 requisition, inventory control, and purchase order
9 applications.

10 Q And how does the Lawson transaction manager execute the
11 4GL applications, or what does it do?

12 A Well, so as I tried to describe, it determines which
13 programs are running at what time. It moves data into and out
14 of the associated working storage structures, and it collects
15 the results. It may also intermediate access to the database,
16 provide access to the database.

17 Q And you talked about this DB thin API. First of all, what
18 is an API?

19 A The term API, the acronym API stands for application
20 programmer interface, and it is just a collection of functions
21 or utilities, features which can be used by the programmer.

22 Q And what do you mean by the term DB thin?

23 A In this case, it is a database API which just means it's a
24 collection of features that allow the Java code to talk to the
25 database. The term thin to me implies that is it a streamlined

1 or otherwise not complex mechanism. It's a delegating
2 mechanism that delegates to another layer.

3 Q What do you mean by delegate?

4 A So it's sort of a thin wrapper around some more
5 complicated functionality. It passes off requests to another
6 layer for additional processing.

7 Q Now, you've shown in your demonstrative that the system
8 has a database associated with it. Have you prepared another
9 demonstrative to help you explain the database that's used by
10 the system?

11 A Yes, I have.

12 MS. ALBERT: Mike, if we could, could we have slide
13 number 85, please.

14 Q Is this a demonstrative that you prepared to illustrate
15 the database?

16 A Yes, it is.

17 Q Could you describe at a high level the nature of the
18 database?

19 A Yes. So it is what's known as a relational database.
20 Lawson refers to this database as the item master database.
21 The database contains numerous tables. Tables within a
22 database, you can roughly analogize to files in a filing
23 cabinet. They may contain different types of information.

24 There are a number of actual tables from the Lawson item
25 master database illustrated here. The one that I'll mention, a

1 key table is the ITEMMAST table on the left of this diagram
2 which contains information about items that can be
3 requisitioned within the system, and from -- another table that
4 I'll point out is the POITEMVEN which contains vendor
5 information pertaining to specific items within the ITEMMAST
6 table.

7 Q You mentioned this term relational database. What is a
8 relational database?

9 A The term relational just means that a piece of data within
10 the database can refer to or point to another piece of data in
11 various ways.

12 Q Would you explain the difference between when you say the
13 item master database and when you are referring to this item
14 master or ITEMMAST table?

15 A Yes. So the ITEMMAST table is a specific table within the
16 database. More generally, Lawson documentation refers to the
17 database as a whole or collectively as the item master
18 database, presumably drawing its name from that key table.

19 THE COURT: The ITEMMAST table has what in it?

20 THE WITNESS: It consequence /TAEUPBS information
21 about items which can be requisitioned.

22 Q What are some of the types of information about the items
23 that are contained in that table?

24 A It contains an item number for the item, a textual
25 description of the item, and other information about the item.

1 Q Now, you have a few other tables illustrated on your
2 demonstrative. Could you provide us with a high level
3 description of the purpose of the table that's listed R-E-Q
4 header or REQHEADER?

5 A Yes. The abbreviation R-E-Q is short for requisition, so
6 this is the requisition header table, and it is involved in
7 both shopping cart and requisition functionality.

8 Q And then you have another table that is referred to as P-O
9 inter F-A-C, POINTERFAC. What is the purpose behind that
10 table?

11 A The POINTERFAC table is involved in making requisitions
12 available to the purchase order system. It's kind of an
13 intermediary.

14 Q And I believe you talked about the POITEMVEN table. You
15 have another table shown that's labeled KWDDetail. Can you
16 explain at a high level the purpose of that table?

17 A Yes. Here the acronym, the abbreviation KWD stands for
18 keyword, so it would be keyword detail table, and it is an
19 index used in keyword searches.

20 Q Now, we referenced this requisition self-service
21 application earlier. Can you explain to the jury from a source
22 code perspective what the requisition self-service application
23 is?

24 A Yes. So, it is a -- as I described, it is a web-based
25 interface to the Lawson purchase order, requisition, and

1 inventory control systems.

2 Q And is that a more -- can you say whether or not that's a
3 more user-friendly interface?

4 A Certainly, yes. It's the main reason for adding a
5 web-based interface to an application, is to provide increased
6 or ease of use and flexibility.

7 Q Could you explain from a source code perspective what
8 Lawson's procurement punchout application is?

9 A Yes. So procurement punchout is a feature of the -- which
10 runs in the context of the requisition self-service application
11 that allows a user to connect to a remote Lawson partner vendor
12 site, perform -- well, it communicates with the site.

13 The Lawson system communicates with the site over a secure
14 communications channel, performs a handshake using a protocol
15 known as cXML which is a business standard for this type of
16 communication. It allows the user to perform certain shopping
17 operations on the partner site, the vendor site, and ultimately
18 to have those shopping results returned to the Lawson system
19 for incorporation into their shopping cart.

20 Q I'd like to turn now to the category search functionality
21 that you studied. Does the source code of Lawson system
22 implement functionality that allows a user to search for items
23 by category?

24 A Yes, it does. There is an option from the find/shop menu,
25 the requisition self-service that brings up a category search

1 screen.

2 Q What, if any, database tables does the source code use to
3 conduct this category search functionality?

4 A There are two. One is called IC item code, ICITEMCODE,
5 and the other is the previously mentioned ITEMMAST table.

6 Q Do both of those tables belong to that same item master
7 database that you described earlier?

8 A Yes, they do.

9 Q What information is contained within that ICITEMCODE table
10 that would be relevant to searching by category?

11 A The ICITEMCODE table contains the textual description of
12 the levels of the UNSPSC hierarchy and the corresponding codes
13 that are assigned to those levels.

14 Q And what information does the item master table store that
15 is relevant to searching by category?

16 A The item master table contains -- in addition to the item
17 descriptions, contains the corresponding UNSPSC codes
18 indicating where they belonged in that hierarchy.

19 Q When the category selection is chosen by a user from that
20 find/shop menu, what is the first thing that happens in the
21 source code?

22 A When a user chooses to bring up a category search screen,
23 a request is made from the user's web browser to the back end
24 of the Lawson system. Specifically Lawson calls this kind of
25 request a data request, and it is -- it is handled by the --

1 passed from the Java code to the -- using the DB thin API that
2 I mentioned previously and results in a search of the
3 ICITEMCODE table for the top levels of the UNSPSC hierarchy.

4 Those top level initial part of the drill-down are
5 returned to the -- formatted as XML and returned to the
6 client's web browser where it's presented to the user to make
7 their initial choice.

8 Q After the system retrieves these top level categories from
9 the database, would you explain what happens in the source code
10 as the user navigates the available hierarchy of categories?

11 A Yes. So the process is very similar to that of retrieving
12 those initial top level categories with the exception that as
13 the user chooses levels in the browser, the corresponding
14 UNSPSC codes are conveyed with the request to the back end
15 system, and the ICITEMCODE table is searched to find the
16 corresponding levels, the children or the child levels
17 underneath the selected level. That information is returned
18 and then formatted for the user. In this fashion they can
19 drill down, expanding from the parent to the child.

20 Q When the user finds his desired category --

21 THE COURT: Excuse me. The parent is the larger and
22 the child just means the more specific; is that right?

23 THE WITNESS: Yes. If you imagine like a family
24 tree, there is a parent, and the children kind of branch out
25 and grandchildren branch out from there. That's what I meant

1 in terms of that hierarchy.

2 Q Once the user finds his desired category and chooses to
3 view the items that belong to that category, will you explain
4 what happens in the source code to cause the items that belong
5 to that category to be displayed?

6 A Yes. So when the user selects the items link, the UNSPSC
7 codes for that particular level of the hierarchy are packaged
8 up as part of a request. In this case, it is what's known as a
9 transaction request. It's passed from the user's browser to
10 the back end, the server component of the Lawson system.

11 This results in a Lawson 4GL COBOL program called RQIB
12 being executed which searches the ITEMMAST table for items
13 which have the corresponding UNSPSC codes. The resulting item
14 information is then formatted as XML and returned to the
15 client's web browser where it is formatted as a search result
16 list.

17 Q Now, Mr. Niemeyer, I'd like to turn to the keyword search
18 functionality in the Lawson system that you studied. Does the
19 source code of Lawson system implement functionality that
20 allows a user to search by a keyword?

21 A Yes. The user may choose search catalog option from the
22 find/shop menu of the requisition self-service application
23 which brings up a keyword search screen with a field in which
24 the user can enter one or more search terms. That screen has
25 some additional functionality, advanced search functionality

1 which allows the user to limit the search, the scope of the
2 search to Lawson certain origin fields and optionally provide
3 what it's called an exclusion term.

4 Q What do you mean by an origin field?

5 A It determines where in the information associated with an
6 item the term was located. So there are multiple tables which
7 can relate to a given item within the ITEMMAST table, and
8 different textual and numeric information may be found in those
9 tables. They named those different locations as origin fields,
10 and the user can limit the search if they wish.

11 Q Can you give us an example of an origin field?

12 A Well, so the primary description within the ITEMMAST
13 table, there's a field for the description, is the particular
14 origin field. There is also a vendor description in the
15 POITEMVEN table. That is another example of an origin field.

16 Q Have you prepared a demonstrative to help explain how the
17 keyword search functionality is implemented in the source code?

18 A Yes, I have.

19 MS. ALBERT: Mike, could we have slide 24, please.

20 Q Is this the demonstrative that you prepared?

21 A Yes, it is.

22 Q What, if any, database tables are involved in this keyword
23 search functionality?

24 A Well, there are seven depicted here, but the four that I
25 would describe as first are the keyword tables at the bottom.

1 These are prefixed with the KWD abbreviation, and they are
2 keyword synonym, keyword master, keyword detail, and keyword
3 setup. These tables comprise an index of the available search
4 terms, and then there are three tables above, ITEMMAST which I
5 previously mentioned, POITEMVEN, and a table called ITEMLOC,
6 I-T-E-M-L-O-C, are used after the search is performed to
7 retrieve the item information.

8 Q And do all of these tables belong to that item master
9 database that you illustrated earlier?

10 A Yes, they do.

11 Q What data is contained or what is the keyword detail
12 table?

13 A Keyword detail table is the key index of search terms, and
14 it relates a specific search term which has been found to the
15 origin field in which it was located and the item number of the
16 item in which it was found.

17 Q And what types of data is contained in that table?

18 A Well, as I said, there's an item number, a keyword, and an
19 origin field.

20 Q Would you please explain briefly how the functionality to
21 build the keyword detail table is implemented in the source
22 code?

23 A So my understanding is when the system is set up
24 initially, users determine which origin fields are to be
25 enabled for search, and the terms are gathered from the data

1 and placed into the keyword detail table. For each item, there
2 is a corresponding keyword and an origin field.

3 Q And what database tables are indexed by the keyword detail
4 table?

5 A My understanding is that at minimum, the ITEMMAST,
6 POITEMVEN, and ITEMLOC tables.

7 Q In the context of this source code, what is the purpose of
8 having an index like the keyword detail table?

9 A It's common practice to create an index to -- an
10 optimization to increase the speed of the search and to
11 eliminate to need to search the whole collection of data when
12 you can condense it to an index that you can search more
13 rapidly.

14 Q Can you explain how the item vendor table or the POITEMVEN
15 table is used in the implementation of a keyword search in the
16 source code?

17 A After the search is performed against the keyword tables
18 and item information is being retrieved, corresponding vendor
19 information for the items is retrieved from the POITEMVEN
20 table.

21 Q Do the records in the item vendor or POITEMVEN table link
22 in any way to the records in the item master or ITEMMAST table?

23 A Yes, they do. They contain a field which holds the item
24 number for a given item in the ITEMMAST table.

25 Q Have you prepared a demonstrative to help you explain how

1 the information in these two tables can be related?

2 A Yes, I have.

3 MS. ALBERT: Mike, can we have slide 68, please.

4 Q Is this the demonstrative that you prepared?

5 A Yes, it is.

6 Q Now, using your demonstrative, would you please explain
7 how records in the item vendor or POITEMVEN table can be
8 related to records in the item master table or ITEMMAST table?

9 A Yes. So within the ITEMMAST table, or the item master
10 table, there is a field called ITITEM which holds the item
11 number for that item. That item number uniquely identifies the
12 item within the ITEMMAST table.

13 The PO item vendor table then can -- given record within
14 that table can refer to an item within the ITEMMAST table using
15 that unique number. It's what's known as a key field in the
16 ITEMMAST table. Within the POITEMVEN table, there's a field
17 called PIV item which holds that number, and, therefore, if you
18 want to, for a given item in the POITEMVEN table, you can point
19 back to a specific unique item within the ITEMMAST.

20 MS. ALBERT: Mike, could we go back to slide 24,
21 please.

22 Q Now, going back to your demonstrative on keyword search
23 query execution, can you explain how the keyword search
24 functionality is implemented in the Lawson system source code?

25 A Yes. So after the user enters a search term in the

1 browser and hits the search button, the search term is conveyed
2 as part of a request to the server side components which causes
3 the Lawson 4GL COBOL program called RQIC to be executed. The
4 RQIC program ultimately performs a search of the keyword detail
5 table for occurrences of that term that have been previously
6 indexed.

7 Any matching records from the keyword detail table are
8 then used to find the corresponding items in the ITEMMAST table
9 and data gets gathered from the PO and ITEMLOC tables. All of
10 those results are formatted as XML and ultimately returned to
11 the item web browser and formatted as a search word.

12 Q When the search code searches the keyword tables to locate
13 the keywords that the user typed in, does the source code
14 search the item master table at all?

15 A No, it does not. It only searches the keyword detail
16 table and the associated keyword tables.

17 Q Now, I'd like to turn to the functionality for the adding
18 items to a shopping cart and building a requisition. Does the
19 source code of the Lawson system implement functionality that
20 allows a user to select desired items for requisition from a
21 list of results returned from either this category or keyword
22 search that you discussed?

23 A Yes, it implements a shopping cart functionality whereby
24 the user can indicate that an item from a search result should
25 be added to the shopping cart. Items can be added and removed

1 until checkout operation is performed. Similar to the way you
2 shop on Amazon or another web business.

3 Q Now, what, if any, database tables are involved in this
4 shopping cart functionality?

5 A There are three. Two of them are prefixed with the term
6 REQ. One is called REQHEADER and the other is called REQLINE.
7 The third is called PO interface which we mentioned before,
8 POITERFAC.

9 Q And what information is stored in that REQLINE table
10 that's relevant to the shopping cart functionality?

11 A The REQLINE table holds the individual line items
12 representing items that were selected to be added to the
13 shopping cart.

14 Q Does this REQLINE table also contain a status field?

15 A Yes, it does. In addition to the item information, it
16 contains a status which can indicate that the item is either --
17 while in the shopping cart, it's in a state called unreleased.

18 Q What does that mean?

19 A It means that it is part of a shopping cart and not yet
20 part of a requisition.

21 Q And is there another status that can be indicated in this
22 status field in addition to the unreleased status that you
23 mentioned?

24 A Yes. So I'd just say both the REQLINE and REQHEADER table
25 that I mentioned which are involved in this contain a status

1 field which indicates the disposition of the information,
2 whether it's part of the shopping cart or whether it's part of
3 requisition, that the two values can be what's called
4 unreleased or released.

5 It indicates it's either in a status of unreleased or
6 released where unreleased is the status used while the items
7 are in the shopping cart, and released is -- indicates that
8 they are now part of the requisition.

9 Q What information is stored in that REQHEADER table that's
10 relevant to the shopping cart function?

11 A The REQHEADER table represents the shopping cart as a
12 whole in this case, and it groups the REQLINE records together.

13 Q Can you explain how this shopping cart functionality is
14 implemented in the source code?

15 A Yes. So as the user indicates that they would like to add
16 an item to the shopping cart, when the user indicates the item
17 should be added to the shopping cart, the item number for that
18 item is conveyed as part of a request to the server side at
19 which point a Lawson 4GL COBOL program is executed to add a
20 line to the REQLINE, add a record to the REQLINE table
21 corresponding to that item.

22 Q Have you created some demonstrative to show what happens
23 in the source code when the user clicks on the checkout button
24 after he has added items to the shopping cart?

25 A Yes, there should be two.

1 MS. ALBERT: Mike, can we go first to slide 25,
2 please.

3 Q Now, using these demonstratives, would you please explain
4 what happens in the source code when the user clicks on that
5 checkout button after he's added items to the shopping cart?

6 A So when a user clicks on the checkout button, there's two
7 major -- two phases that happen, and this depicts the first.

8 If at this point a requisition header, REQHEADER record
9 has not previously been created, one will be created at this
10 time. This happens when a request is made from the client's
11 web browser to the server side causing the Lawson COBOL program
12 RQIB, or create requisition header which is shown here, to be
13 executed. That program adds a record to the REQHEADER table.

14 Q What is a requisition header?

15 A Again, in this case, it represents either the shopping
16 cart as a whole or the requisition as a whole. It serves to
17 group the requisition lines and to contain a status for the
18 overall shopping cart or requisition.

19 MS. ALBERT: Mike, can we go to slide 26, please.

20 Q So now can you explain what happens in the source code in
21 the next step in this process?

22 A In this step, there are two activities of importance.
23 This, again, is happening after the user has clicked the
24 checkout button. Request is -- second request is made from the
25 client's browser to the server side. In this case, the Lawson

1 4GL COBOL program called RQIF, or release requisition, is
2 invoked.

3 Its first job is to update the status that I mentioned
4 before in both the REQHEADER and REQLINE tables from an
5 unreleased to a released value. The second step is to create
6 records in the PO interface table, POINTERFAC table, which make
7 those records, make that information then available to the
8 purchase order system.

9 Q Are records created in this PO interface table at the time
10 when items are initially added to the shopping cart?

11 A No. They are only created after the checkout operation is
12 performed.

13 Q Are the records in the REQHEADER and REQLINE tables
14 available to the purchase order system prior to that checkout
15 button being pressed?

16 A No, they are made available by virtue of the records in
17 the PO interface table.

18 Q Now I'd like to turn to the process for generating a
19 purchase order. Does a source code of the Lawson system
20 implement functionality that generates one or more purchase
21 orders corresponding to the items listed in a requisition built
22 using the Lawson system?

23 A Yes, it does. The user can use a program called PO 100 to
24 generate one or more purchase orders from a requisition.

25 Q Does the source code indicate anything about when multiple

1 purchase orders would be created from line items in a single
2 requisition?

3 A Yes. As part of the purchase order generation process,
4 the requisition items are essentially sorted in order to
5 produce a separate purchase order for each vendor corresponding
6 to items in the requisition.

7 Q Have you prepared a demonstrative to explain how this
8 functionality is implemented in the source code?

9 A Yes, I have.

10 MS. ALBERT: Mike, could we have slide 27, please.

11 Q Now, what, if any, database tables are involved in this
12 purchase order functionality?

13 A There are three depicted here. The first is the PO
14 interface table which I mentioned previously. The two new
15 tables are -- one is called PURCHORDER, short for purchase
16 order, P-U-R-C-H-O-R-D-E-R, and the second is POLINE,
17 P-O-L-I-N-E, short for purchase order line.

18 Q What information is stored in the PO interface table
19 that's relevant to the purchase order generation function?

20 A Well, I mentioned before, this serves to make the
21 requisition information available to the purchase order system.

22 Q And what information does the PURCHORDER or purchase order
23 table store that's relevant to the purchase order generation
24 function?

25 A A record in the PURCHORDER table represents a specific

1 purchase order for a given vendor.

2 Q What information does the POLINE table store that's
3 relevant to this purchase order generation function?

4 A The POLINE table contains the individual line items for a
5 specific purchase order. They relate to a given record in the
6 PURCHORDER table, and they contain the information by an
7 individual requested item.

8 Q Using your diagram, would you explain how that
9 functionality, generating one or more purchase orders, is
10 implemented in the source code?

11 A Yes. So after the user indicates that they would like to
12 generate purchase orders for a requisition, a request is made
13 to the server side, and the Lawson 4GL program PO 100 is
14 executed. That program reads records from the PO interface
15 table, and as I described before, essentially sorts them in
16 order to create a separate PURCHORDER record for each vendor
17 having items within the requisition.

18 The corresponding line items are added to the POLINE table
19 for that PURCHORDER, and while this process is happening, a
20 textual report is being generated that the user can later print
21 as an actual purchase order.

22 Q Now, Mr. Niemeyer, I'd like to turn to the procurement
23 punchout application which we discussed earlier. Does the
24 source code of the Lawson system implement the procurement
25 punchout functionality?

1 A Yes, it does.

2 Q Of the procurement punchout functionality, what is the
3 first step that's implemented by the source code?

4 A When a user indicates that they would like to start the
5 punchout process, they are presented with a list of Lawson
6 partner vendors from which to choose. That list is derived
7 from configuration within the system.

8 The user may select one of those at which point the Lawson
9 system establishes or performs a handshake with the remote
10 system. It has established a secure connection, essentially
11 logs the user in remotely, and in return it receives a URL or
12 web address that can be used to establish the shopping session.

13 Q And once the shopping session is established, can you
14 describe the next step that's implemented by the source code to
15 achieve this punchout functionality?

16 A Yes. So at this point, what's known as an IFRAME,
17 I-F-R-A-M-E, is opened within the browser. Essentially like a
18 little browser window within the browser. It allows the user
19 to perform their shopping activity on the partner website. At
20 the completion of their shopping, the results of their
21 shopping, remote shopping cart are communicated back to the
22 Lawson system over the network by virtue of a Java servlet on
23 the Lawson system and ultimately incorporated into their
24 shopping cart within RSS. At that point, those items can be
25 used just as they would if they had been shopped for using the

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1 other mechanisms we described.

2 Q How is this punchout process different, for instance, from
3 when I access a retail website for my home computer on my
4 browser at my computer?

5 A It's different in that the Lawson system is intermediating
6 it or controlling it in several ways. When you do -- when you
7 shop on your computer at home you are connecting directly to a
8 website like Amazon or something, and all the communication is
9 direct.

10 In the case of the Lawson system foundation, this is
11 happening within the context of the requisition self-service
12 application. The Lawson system both establishes the connection
13 to their remote site, performs a login operation for the user,
14 and then finally when the shopping is done, those results are
15 communicated back to the Lawson system directly which it then
16 incorporates into the user shopping cart within RSS,
17 requisition self-service.

18 MS. ALBERT: Thank you, Mr. Niemeyer. I have no
19 further questions. Please answer any questions that Ms.
20 Stoll-DeBell may have.

21

22 CROSS-EXAMINATION

23 BY MS. STOLL-DeBELL:

24 Q Good morning, Mr. Niemeyer.

25 A Good morning.

1 Q Prior to your involvement in this case, you had never used
2 Lawson's procurement software; isn't that true?

3 A That's true.

4 Q And, in fact, before you began working on this case, you
5 had never used any kind of procurement software.

6 A I've worked on enterprise systems including eCommerce
7 systems that resulted in procurement and similar types of
8 systems, but not a procurement system per se, no.

9 Q And in -- do you recall being deposed in this case?

10 A Yes.

11 Q And you told the truth and the whole truth in your
12 deposition?

13 A Of course.

14 Q And do you recall saying that you had never worked with
15 procurement software in your deposition?

16 A I don't recall --

17 THE COURT: Ms. Stoll-DeBell, we need to get on the
18 point of use. It didn't impeach what he said. He just
19 qualified it somewhat. So let's don't do things that don't
20 actually correspond item to item, so to speak. That's not
21 impeaching. That's just an explanation of his testimony. All
22 right.

23 Q And you reviewed only one version of Lawson source code
24 for this case?

25 A I reviewed the source code that was provided. I wasn't

1 asked to classify it by version.

2 Q I couldn't hear you. Sorry.

3 A I reviewed the source code that I was provided. I wasn't
4 instructed specifically about versions.

5 Q You were provided with version nine of the source code?

6 A My understanding is that it was version nine, yes.

7 Q That it was version nine?

8 A Yes.

9 Q I'm having a little bit of a hard time hearing you.

10 THE COURT: Pull that a little closer.

11 Q Do you know what products are accused of infringement in
12 this case?

13 A My understanding is that the Lawson systems involved in
14 inventory control, purchase order, and requisitions are
15 involved in infringement.

16 Q And RSS?

17 A Well, yes.

18 THE COURT: He's not testifying about infringement.

19 MS. STOLL-DeBELL: I'm just trying to get his
20 understanding as to what the products are at issue in this
21 case.

22 THE COURT: Well, he testified about all of that in
23 his direct testimony in terms of the source code. That's
24 where -- not in terms of infringement, and I don't want the
25 jury to believe they are hearing two different infringement

1 opinions, because I told you all, under the rules of the Court,
2 you can only have one expert on topics like that. So let's
3 stay away from the issue of infringement, I would suggest if
4 you don't mind.

5 Q You are aware that Lawson's S3 supply chain management
6 suite includes three modules called inventory control,
7 requisitions, and purchase orders?

8 A Yes.

9 Q And we've been calling these the core system, so if I use
10 that term for the system, you'll understand what I'm talking
11 about?

12 A Sure.

13 Q Do these core -- does this core system operate on a
14 platform, a software platform called LSF?

15 A Portions of it I would describe as -- first I should say,
16 I only have an understanding of what Lawson system foundation
17 is by virtue of what I've been told. It's not really something
18 I -- technical components I studied in my report, but my
19 understanding is that generally corresponds to the transaction
20 environment in which the COBOL runs. So if you're asking me if
21 that functionality is supported by that, it is.

22 Q Okay. So you did not review the source code for LSF?

23 A If FLS corresponds to the transaction monitor, I did
24 review source code for that. Again, it's just a name, so it's
25 not a technical question. So I'm not sure how to answer it

1 other than to tell you what I studied.

2 Q But you didn't review all of the source code for the LSF;
3 will you agree with that?

4 A That's probably true, yes.

5 Q Is this an accurate depiction of the core modules
6 operating on the LSF platform?

7 MS. ALBERT: Lack of foundation, Your Honor.

8 Q Have you seen this slide before, Mr. Niemeyer?

9 A I don't recall it, no.

10 THE COURT: Sustained.

11 Q Did you work with Dr. Weaver on this case?

12 A I did on one occasion talk to him about the results of my
13 report and a few phone conversations following that.

14 Q Did Dr. Weaver rely on your expert report regarding the
15 operation of Lawson source code?

16 A It's my understanding that he did, but I don't know.

17 Q Now, you did not review all of the source code for all
18 three of the core modules shown in the blue box here, did you?

19 A I only reviewed the portions of it relating to the
20 functionality that I was asked to investigate.

21 Q So the answer is yes, you did not review all of the source
22 code for all of the three core modules shown in the blue box
23 here; is that correct?

24 A That's correct.

25 Q And you did not review all of the source code for the

1 inventory control module?

2 A No, I did not.

3 Q And you did not review all of the source code for the
4 requisitions module?

5 A I only reviewed the portions that were relevant to what I
6 was asked to investigate.

7 Q To answer my question, you did not review all --

8 THE COURT: He answered it. He said I only -- he may
9 not have given the answer that you thought he ought to give,
10 but he answered the question. I think that's sufficient.

11 Q And isn't it true that you did not review all of the
12 source code for the purchase order module?

13 A Again, I only reviewed specific portions, so, no.

14 Q And you did not review the portion of the source code
15 relating to searching in the RQ module?

16 A I'm not sure what you are referring to exactly. I
17 reviewed code pertaining to category and keyword searches which
18 are part of the inventory control module.

19 Q Those are part of the RSS product?

20 A And the inventory module.

21 Q And I'm talking about the requisitions module.

22 A I'm sorry. What's the question?

23 Q Are you aware that there is a searching functionality that
24 is part of the requisitions module?

25 A Part of the requisitions module?

1 MS. ALBERT: This is beyond the scope of my direct,
2 Your Honor.

3 MS. STOLL-DeBELL: Your Honor, I'm just trying to
4 establish what functionality he looked at and what he didn't,
5 and there is searching in this case that is in addition to the
6 keyword searching and the category searching, and I'm just
7 trying to establish that he did not look at it.

8 THE COURT: He said about four times now that what he
9 did -- he was given from Lawson a set of source codes, and he's
10 described what he did review, and if there exists other source
11 code that he didn't review, then by force he didn't -- of his
12 testimony about what he did review, he didn't review the other,
13 and he said about three times, I reviewed only what was
14 relevant to my job, to the task I was given.

15 MS. ALBERT: Your Honor, could we ask that the slide
16 be removed from the screen?

17 THE COURT: Yes, take that off, because he's never
18 seen it.

19 Q Okay, I'm going to ask you a few questions about
20 requisition self-service which we've also been calling RSS. I
21 think you may have called it RSS also?

22 A Yes.

23 Q So you know what I'm talking about?

24 A Yes.

25 Q RSS is a browser-based portal user interface for accessing

1 various functions of the core modules we just talked about; is
2 that true?

3 A Yes, that sounds correct.

4 Q So to put it in maybe a simpler terminology, RSS is an
5 overlay of the core modules; would you agree with that?

6 A Yes.

7 Q And you did not review all the source code for RSS either;
8 is that true?

9 A I only reviewed the portions relevant to the functionality
10 I was asked to investigate, so, no, I did not review all of
11 them.

12 Q Lawson's software uses a database to store item data; is
13 that correct?

14 A Among other things, yes.

15 Q And is this database a relational database?

16 A Yes, I would call it a relational database.

17 Q I think you talked about at least three data tables that
18 are included within this relational database.

19 A Correct, yes.

20 Q One of those was the item master tables?

21 A One of those was the ITEMMAST table.

22 THE COURT: Both of you, from time to time, lapse
23 into item master table when he has consistently said and every
24 time corrected you to say ITEMMAST table which is what he had
25 on his demonstration. Just so the terms aren't confused, let's

1 stay with his terms.

2 MS. STOLL-DeBELL: Can we go to Mr. Niemeyer's slide
3 number seven.

4 THE COURT: Do we need to switch systems?

5 MS. STOLL-DeBELL: I think we should have his slides
6 on our system.

7 Q I think you talked about an item master database and an
8 ITEMMAST table?

9 A Yes, I did.

10 Q And I think you previously talked about having two
11 definitions of item master?

12 A I don't recall saying that there were two definitions. I
13 described the database collectively, loosely, as the item
14 master database. That's how Lawson refers to it.

15 There's a specific table within the database called
16 ITEMMAST. The abbreviation obviously implied the term item
17 master, hence the name of the table in the database.

18 Q Does any of the Lawson documentation that you reviewed
19 call the database as a whole item master?

20 A I'm sure that it did. I can't recall a specific example.
21 I know that there was testimony in some of the depositions
22 where people -- where this is referred to as the item master
23 database. I know I saw it on numerous occasions, and that's
24 where -- why we began calling it that.

25 Q So is it your position that the Lawson documentation does

1 refer to this database as a whole as item master?

2 A I believe I saw it in Lawson documents. I don't recall
3 exactly which ones. My report may have cited something.

4 Q Okay. So if it wasn't in your report --

5 A If it wasn't in my report, then I'd have to research it.

6 THE COURT: Wait a minute. Y'all are talking over
7 each other. So you started off asking a question, so it wasn't
8 in your report. He then answered right in the middle of it,
9 and I don't think anybody heard anything. So if you have a
10 question, ask the other question -- I mean ask the question,
11 and then give her a chance get finished with the question, and
12 then you can respond with your answer.

13 Q So if there was documentation that referred to the
14 database as a whole as item master, you would have cited it in
15 your report?

16 A I believe my report cites the depositions of Mr. Dooner
17 and Mr. Christopherson who, I believe, referred to it as the
18 item master database in those depositions.

19 Q Let's talk about the ITEMMAST tables. ITEMMAST -- the
20 ITEMMAST tables store data regarding inventory items; is that
21 correct?

22 A There is only one ITEMMAST table, it's singular, and it
23 does store information about items which had been
24 requisitioned, yes.

25 Q And there is a schema for item data in the ITEMMAST table.

1 A Yes.

2 Q And the schema is defined in the source code for Lawson's
3 inventory control module.

4 MS. ALBERT: This is beyond the scope of my direct.

5 MS. STOLL-DeBELL: Your Honor, I'm just trying to
6 understand. I'm going to get into the fields and what fields
7 he looked at for the ITEMMAST table which relates to the
8 schema. So I'm trying to set up some foundation for the next
9 couple of questions I'm going to ask him, and also in a way
10 that maybe lay some background so that the jury can attempt to
11 follow what we're talking about.

12 THE COURT: It doesn't help me in ruling on the
13 objection to tell me what you're doing. Her objection was that
14 it wasn't something she inquired about. And so the question
15 is, for you, what does it relate to that she did inquire about,
16 and that's what you need to tell me. Otherwise, I'm going to
17 sustain the objection.

18 MS. STOLL-DeBELL: It relates to the fields in the
19 ITEMMAST table and what those are, and she did ask him
20 questions about that.

21 THE COURT: And your question right now isn't related
22 to anything she asked, but it's going to get there because you
23 are laying a foundation.

24 MS. STOLL-DeBELL: Yes.

25 THE COURT: Get there quickly. Overruled.

1 Q So I think I'll reask the question, because I'm not sure I
2 got an answer to it. There is a schema for the item data in
3 the ITEMMAST table.

4 A Yes, yes, there is.

5 Q And that's defined by the source code for Lawson's
6 inventory control module?

7 A Loosely described, yes. There are files which describe
8 the schema -- there are files which describe the schema which I
9 found within the source code. Technically I wouldn't call them
10 source code. They are schema files.

11 Q And schema defines what fields are included in the
12 ITEMMAST table?

13 A Yes, it describes them.

14 Q And is a field -- I think of it as being an attribute for
15 an item. Would you agree with that?

16 A Sure.

17 Q So, for example, item number would be a field of the
18 ITEMMAST items?

19 A Yes. It has a different name, but there is a field that
20 represents the item number.

21 Q And item description would be another one?

22 A Yes.

23 Q Unit of measure another one?

24 A Yes.

25 Q You could have provided a list of all of the item master

1 fields in your expert report; that is something you are capable
2 of doing?

3 A Yes.

4 Q But you did not do so?

5 A No, I did not.

6 Q Do you agree with me that the item master schema does not
7 include a field for vendor name?

8 A The ITEMMAST table contains, among other things, what are
9 known as user defined fields which can be supplied by the user
10 with whatever information they like which could include vendor
11 name or vendor number, things like that. Additionally, I point
12 out that the POITEMVEN table relates to the item master table
13 by virtue of its item number.

14 Q But that's not what I asked you. I asked you does the
15 ITEMMAST table have a field for vendor name?

16 A Other than the user defined field which could be used for
17 that purpose, it doesn't have a specific field.

18 Q It can be used for any purpose, you can put anything in
19 there at all; correct?

20 A Yes.

21 Q So I'll ask you again. Does the ITEMMAST table --

22 THE COURT: I think he's answered. He said twice now
23 that --

24 MS. STOLL-DeBELL: I'd just like him to say no, Your
25 Honor.

1 THE COURT: I know you would, but that's not his
2 answer. His answer isn't no. His answer is it can be used for
3 that purpose if one wants to use it for that purpose which, per
4 force, precludes a no answer. So let's go on. I understand
5 how we'd like to get things, but we don't always get what we
6 like.

7 Q Okay. Assuming that the user defined fields are not --
8 someone doesn't choose to put vendor names in there -- let's
9 make that assumption -- there's not otherwise a vendor field.
10 So do you agree with me that a user cannot search the ITEMMAST
11 table by vendor name?

12 A Users don't directly search tables. I don't really know
13 how to address that. Users use the application which runs code
14 which performs searches against many tables.

15 Q So going through a process, it is possible to search the
16 ITEMMAST table?

17 A Yes, I'll agree with that generally, sure.

18 Q If a user field isn't set up as a vendor name, then you
19 can't search the ITEMMAST table by vendor name?

20 A If the user has not defined a field as such, then there
21 would be no way to search by vendor name that I'm aware of.

22 Q I want to talk a little bit about the keyword search
23 functionality in RSS.

24 A Okay.

25 Q You did review that; correct?

1 A Yes, I did.

2 Q And that functionality is based on an index of fields
3 defined by another Lawson program called IC 00.5; is that
4 correct?

5 A Yes. Although I did not study that program in particular,
6 that's my understanding, is that it's responsible for producing
7 that index.

8 Q And you stated in your report, I think, that the search
9 index includes all fields of the item master that are enabled
10 for keyword searching; is that correct?

11 A That sounds correct, in addition to other fields of other
12 tables.

13 Q And isn't it correct that vendor name is not one of those
14 defined fields?

15 A Within the ITEMMAST table, there's no vendor name if
16 that's what you are asking, but the POITEMVEN table, which
17 contains vendor information, is indexed as part of that
18 process.

19 Q But it's not -- vendor name is enabled for searching
20 within RSS?

21 A I don't recall there's a vendor name within the POITEMVEN
22 table, but the vendor information from that table is indexed as
23 part of that process.

24 Q Let's change the focus to category searching. I'm going
25 to ask you a couple questions about that. That is something

1 else that you reviewed in Lawson's source code?

2 A Category search, yes.

3 Q And the category searching functionality is limited to the
4 RSS program?

5 A I only reviewed the functionality that is contained in the
6 RSS program. I don't know where else it might exist.

7 Q We can agree that the displayed information for each
8 category comes from a table of UNSPSC codes and corresponding
9 category description; is that correct?

10 A Yes.

11 Q And can we agree that this UNSPSC table does not include
12 vendor names?

13 A As far as I know, yes.

14 Q And do you agree that this UNSPSC table does not include
15 item information?

16 A Well, it contains the textual descriptions of the UNSPSC
17 hierarchy which are describing items.

18 Q So it will say whatever, how many digits are in the code?

19 A There are four fields.

20 Q So four fields, and they'll say this particular field
21 relates to printer cartridges; right?

22 A Yes.

23 Q But it doesn't say what items within the Lawson's database
24 relate to that.

25 A That's correct.

1 Q So it's really just the UNSPSC code and an English
2 language description of what that code means?

3 A That's correct.

4 Q I'm going to ask you some questions about punchout now.
5 You testified that punchout provides an interface by which
6 Lawson's RSS program can be linked to a third-party punchout
7 website; is that correct?

8 A That sounds correct.

9 Q And isn't it true that procurement punchout allows users
10 to shop for items found in electronic catalogs on punchout
11 partner vendor websites?

12 A You are asking me if that's true in general or I said that
13 precisely?

14 Q Is that true?

15 A That sounds correct, yes.

16 Q Isn't it true that using Lawson's punchout software is
17 different than shopping on a vendor's public website?

18 A Yes, I'd say so, yes.

19 Q For one thing, punchout does not connect to a vendor's
20 public website; would you agree with that?

21 A I don't know how the vendors have structured their systems
22 other than the fact -- other than what I studied which is the
23 punchout makes a connection to a vendor server. I wouldn't
24 characterize it as public or private other than by virtue of
25 the functionality.

1 Q Okay. Well, doesn't Lawson's punchout software send
2 secure login and password information to the vendor's website?

3 A Yes, it does.

4 Q And then it can only connect to the vendor's website if
5 that information is good, is a good user name and the password
6 works, and the vendor's website can authenticate that user; is
7 that correct?

8 A That's correct.

9 Q And so if -- and it only sends back the URL for the
10 punchout site if that information is correct and the vendor is
11 able to log in Lawson's customer?

12 A That's correct, yes.

13 Q So you can't get to the punchout vendor's website without
14 a user name and password?

15 A I don't know what other features they may support. I only
16 know that's how the punchout system communicates with those
17 servers.

18 Q And you know Lawson's customer cannot gain access to the
19 vendor's website unless they have the correct user name and
20 password?

21 A First of all, I don't know what other access they may
22 have, but if the functionality that I reviewed, in the
23 functionality that I reviewed, this login phase happens behind
24 the scenes out of the user's control.

25 Q In your expert report in this case, I think you

1 characterized the punchout product as being different than
2 shopping on a vendor's public website; do you agree with that?

3 A I'd have to see what you are referring to. I don't
4 remember exactly what.

5 Q I think you should actually have a copy of your report up
6 there.

7 A Yes, I do.

8 THE COURT: Do you want to give us a page?

9 MS. STOLL-DeBELL: I have a paragraph, 146.

10 THE COURT: Okay, that's fine. What did you say it
11 was, paragraph what?

12 MS. STOLL-DeBELL: 146.

13 THE COURT: See if that refreshes your memory by
14 looking at paragraph 146.

15 MS. STOLL-DeBELL: It's actually page 28.

16 A Okay.

17 Q Does that refresh your memory?

18 A Yes.

19 Q So in your report, you characterize Lawson's punchout
20 product as being different than shopping on a vendor's public
21 website for a couple of reasons, one of which was the user does
22 not log in to the remote website, but instead, a secure
23 system-to-system business-to-business handshake is performed to
24 identify the client automatically.

25 THE COURT: Two things, Ms. Stoll-DeBell. It doesn't

1 say that the -- what you said. It starts off with the word,
2 the process of shopping via, and that's somewhat different. I
3 don't know if it's a significant difference in this case, but
4 it is different because you question because he's asking about
5 a process.

6 If that helps you in some way to reformulate your
7 question, that's fine, but let's focus on exactly what he said
8 there because then we won't get tied up in, well, I didn't say
9 it that way, I said this, and we go through that. We don't
10 need to go through all that. Start again, if you don't mind.

11 Q Isn't it true that the process of shopping via punchout
12 should be distinguished from simply shopping on a vendor's
13 public website in the following ways: First, the user does not
14 log in to the remote website but instead a secure
15 system-to-system, business-to-business handshake is performed
16 to identify the client automatically?

17 A Yes. That's what I stated in my report.

18 THE COURT: There are other ways, but you are just
19 inquiring about that way number one; right?

20 MS. STOLL-DeBELL: Yes, that's correct, Your Honor.

21 THE COURT: All right.

22 Q Now, you testified that you reviewed the source code for
23 the Lawson's punchout software?

24 A Yes, I did.

25 Q And isn't it true that the punchout vendors have their own

1 software that runs the punchout vendor's website?

2 A Presumably, yes. I didn't review any of that, so I don't
3 know.

4 Q Don't websites need software to run them?

5 A That's why I said presumably, yes. Of course.

6 Q And as an expert in software and source code, you know
7 that; correct?

8 A Yes, I'd agree with that.

9 Q But you didn't analyze any of the source code for any of
10 the software from any punchout vendor website?

11 A I only reviewed the source code relevant to the punchout
12 functionality that I was provided, and that was the Lawson
13 punchout functionality that established the connection and
14 retrieved the results of a shopping session.

15 Q That's the source code that manages the handshake between
16 the Lawson customer system and the vendor's website?

17 A In addition to the supporting functionality for -- within
18 the user interface, what you've described is the handshake
19 functionality and functionality involved in receiving the list
20 of items from the Lawson partner site and incorporating them
21 back into the system.

22 THE COURT: In analyzing that part of the Lawson
23 software, did you also analyze any part of the system that
24 operates the partner's -- or that is the partner's software, I
25 think is her question; is that right?

1 MS. STOLL-DeBELL: Yes.

2 THE COURT: Did you go on the other side of the
3 equation and look at their system as well?

4 THE WITNESS: No, Your Honor. I wasn't provided with
5 any of that source code, so other than by virtue of the
6 protocol that's used, I'm not --

7 THE COURT: You didn't go into that side.

8 THE WITNESS: No.

9 THE COURT: Because you weren't given it.

10 THE WITNESS: That's correct.

11 Q So you didn't see -- let me ask it this way: Lawson's
12 source code that you looked at does have search functionality?

13 A Yes.

14 Q Search engine?

15 A Could you clarify the question? I mean there is category
16 and keyword search functionality within RSS that I looked at.

17 THE COURT: He doesn't understand the question.
18 Before you proceed, how much longer do you have with this
19 witness, Ms. Stoll-DeBell?

20 MS. STOLL-DeBELL: Maybe ten minutes.

21 THE COURT: And then you have redirect?

22 MS. ALBERT: A few very brief questions.

23 THE COURT: I think maybe it's probably a good idea
24 to go ahead and take the morning break, and we'll change court
25 reporters. They've been in here for an hour and a half or so.

1 Just take your notebooks with you, and we'll have a 20-minute
2 morning break.

3

4 (Jury out.)

5

6 THE COURT: You people from Minneapolis, what is your
7 reaction to Richmond's reaction to the potential snow with this
8 kind of weather? Do you all shut down anything up there?

9 MR. McDONALD: No.

10 THE COURT: Objection to form is sustained. All
11 right, let's take a 20-minute recess.

12

13 (Recess taken.)

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